

**LAW 1082 – Property and Equity 2**  
**FINAL EXAMINATION - Session 2 2007**

Time allowed: Two and a half hours, plus 10 minutes reading time.

Examination condition: This is an OPEN BOOK examination.  
You are permitted to bring any printed or handwritten materials into the examination room.  
You CANNOT bring mobile phones, computers and calculators into the examination room.

Total number of questions: 2

Value of questions: All questions are of EQUAL value

Questions to be answered: You must answer Question 1 and Question 2.

**OTHER INSTRUCTIONS:**

1. Your NAME and STUDENT ID should be written on the front of each exam booklet you use.
2. Your TEACHER'S NAME and the DAYS AND TIMES of your class should be written at the top right hand corner of each exam booklet you use.
3. Answers must be written in ink.
4. Answers must be legible.
5. Answer each question in a separate booklet.
6. You may retain the examination paper.

## Question 1      50%

Cindy and her boyfriend Mitch decided to buy a warehouse in Camperdown together as an investment. Cindy paid the entire purchase price, but the transfer was made out to Propventures Pty Ltd, Mitch's company, of which he is the sole director and shareholder. Propventures became the registered proprietor on 1 January 2005.

Six months later, Mitch decided to sell the property to Mr Saunders. Cindy was very busy at work and so Mitch did not tell her. During the negotiations, he mentioned to Mr Saunders that he and his girlfriend Cindy invested in property together, but that he did all of the business deals and did not need to get her approval for the sale. He signed the transfer on behalf of Propventures and Mr Saunders became the registered proprietor on 10 July 2005.

Mr Saunders leased the land to Mr Akari who wanted to open a children's indoor play centre. The lease was for seven years, at a rent of \$4000 per month and included the following covenants:

Cl 5 The lessee covenants to fit out the premises as an indoor children's playland at its own expense.

Cl 6 The lessee covenants to keep the premises in repair.

Cl 7 The lessee covenants only to employ staff who are suitable to work with children and who have completed a "Prohibited Employment Declaration" under the *Commission for Young People and Children Act 1998*.

Cl 10 The lessee must not assign or transfer the lease without the lessor's consent.

Cl 11 Breach of any covenant in this lease entitles the lessor to enter and retake possession.

The lease was registered on 15 August 2005. In early 2006, Mr Akari was offered a substantially better business opportunity in south east Queensland and decided to assign the lease to Mrs James. Mr Saunders consented to the assignment and a transfer of lease was registered on 11 March 2006.

Mrs James researched the potential market for a children's playland and decided that it would not be profitable in the area. She believed that warehouse parties would be more successful, but knew little about their logistics. She advertised for potential organisers, eventually deciding on Tamara Toms as an appropriate person. Tamara asked what kind of interest she would have in the actual venue and Mrs James said she was happy to sublease the premises to her.

Mrs James's solicitor drew up an agreement, which Mrs James and Tamara signed on 20 May 2006. It stated that the covenants of the sublease were the same as the covenants in the headlease and that "the lessor gives to the sublessee a term of seven years". Mrs James arranged for Tamara to pay rent directly into Mr Saunders' bank account.

The first warehouse party was held on 22 June 2006, after which 35 neighbours wrote letters of complaint to Mr Saunders demanding that he take action to prevent further disturbance.

One of Cindy's friends told her that she attended a great party at Cindy's warehouse. Cindy was surprised, as the last she knew of the warehouse, it was empty. She asked Mitch and was furious to discover he had sold it. Cindy immediately lodged a caveat on the warehouse's title alleging an "equitable interest" in the land.

- (i) Does Cindy have any entitlement to the land? Should she maintain or remove the caveat?
- (ii) What rights does Mr Saunders have against
  - a. Mr Akari?
  - b. Mrs James?
  - c. Tamara?

## **Question 2      50%**

Phil was the registered proprietor of land on Main Street, in Bargo. He ran a newsagency from there for twenty years. As it was often hard to park on Main Street, stock was always delivered to the back of the building, which could be reached via a driveway from Little Street.

In 1992, he decided to retire. He did not want to move out of the area so he subdivided the land into Lot 1 and Lot 2 (see diagram below) and sold Lot 1 to Danny and Pearl. He built a small house for himself on Lot 2.

Danny and Pearl paid \$30,000 each towards the deposit and the remaining \$100,000 was provided by Anders Finance. The transfer to Danny and Pearl as joint tenants and the mortgage to Anders from Danny and Pearl were registered on 8 May 1992.

Danny and Pearl ran the newsagency together for a year until Pearl grew tired of country life. She decided to go back to Sydney. Danny was happy with this, as he had grown tired of Pearl.

Danny's friend Carlos had some good ideas about expanding the newsagency into an internet café and so Danny decided to go into business with him. Their solicitor drew up the necessary documentation, signed by Danny and Carlos, including an agreement by Danny to sell Carlos half of his share of the land for \$15,000, as well as an agreement by Carlos to make half of the mortgage repayments to Anders. Danny had been paying all of these alone since Pearl left. A transfer to Carlos was not registered.

Danny and Carlos bought ten computers and built a kitchen and café space at the back of the newsagency. In total, the work cost \$50,000. In their first year of operation, the internet and café business earned \$10,000, but every year thereafter, it earned \$30,000. The newsagency earned a steady \$40,000 per annum.

Late one night in March 2006, Danny was killed in a car accident. Carlos was the sole beneficiary and executor of Danny's estate. Phil, who had become close to

Danny was extremely upset, and decided to move away from Bargo. He told Carlos that he was going to sell Lot 2 and that he could not guarantee that any new owner would let them keep using the driveway. Phil said that he had only ever been happy for deliveries to keep being made down the driveway because he thought Danny was such a “top young bloke”. On 1 July 2006, Phil signed a contract of sale of Lot 2 to Lavender.

In the months following Danny’s death, Carlos forgot to make a number of mortgage payments. Anders issued a s57 notice demanding immediate payment of the entire principal and all outstanding interest. Feeling overwhelmed, Carlos ignored the notice. Anders advertised the sale of the land in *Newsagency News*, a national newsagency industry paper. Anders signed a contract of sale of Lot 1 with Blooms Pty Ltd on 5 August 2006.

Hearing of Danny’s death, Pearl wrote to Carlos indicating her intention to lodge a notice of death to remove Danny’s name from the register so that she would be the sole registered proprietor of Lot 1.

Carlos consults a solicitor. Advise Carlos of his rights

- (i) against Pearl in relation to the land itself and any pool of money that the property may become in the event it is sold;
- (ii) against Phil;
- (iii) against Lavender;
- (iv) against Blooms Pty Ltd.

**(Do not consider the *Property Relationships Act* 1984 in your answer).**

